AGENDA
BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND
DECEMBER 16, 2003

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Item 1 **Bid Acceptance/BIP Mining, L.L.C. Lease**

REQUEST: Consideration of an award to BIP Mining, L.L.C., pursuant to section 18-2.018(3)(a), F.A.C., to lease approximately 20 acres of state-owned land for the purpose of rock mining for a 10-year term, with a renewal provision for two additional 5-year terms.

COUNTY: Miami-Dade
Lease No. 4440

APPLICANT: BIP Mining, L.L.C. (BIP)

LOCATION: Section 07, Township 52 South, Range 40 East

CONSIDERATION: Minimum annual rental payment of $35,000 to be credited against a royalty of 6.375 percent of actual sales of limerock extracted, whichever is greater.

ACRES	APPRAISED BY JOHNSTON ON 10/31/02
20	POTENTIAL ROYALTY INCOME - EXCAVATION OF LIMESTONE Initial rate of $0.32 to $0.40 per short ton and/or 5% to 7% of the retail price of extracted aggregate

STAFF REMARKS: The Board of Trustees acquired the subject property under chapter 18296, Laws of Florida, 1937 (Murphy Act lands). The primary land use in this area is rock mining. Portions of the general area consist of relatively undisturbed wetland marsh, while other portions have been cleared for pasture and other agricultural uses, as well as rock mining. A number of small nursery properties and livestock raising operations are also in the area.

Miami-Dade County, the Lake Belt Committee, and the South Florida Water Management District were opposed to selling the subject property and recommended the state retain ownership. A long-term commercial lease was recommended. By leasing the land, the state will be able to retain the property for future uses long after mining operations have ceased. Initially, in anticipation of a potential sale requested by BIP, an appraisal was performed on October 31, 2002 by L. Glen Johnston, MAI, of Slack & Johnson. The land was valued at $420,000, while the potential royalty income – excavation of limestone values ranged from an initial rate of $0.32 to $0.40 per short ton and/or 5 to 7 percent of the retail price of extracted aggregate. Department of Environmental Protection (DEP) Division of State Lands (DSL) staff consulted with the DEP's Bureaus of Geology and Mining and Reclamation to substantiate the appraisal's royalty rates.

Pursuant to section 18-2.019(5), F.A.C., state agencies were noticed of the proposed lease on October 28, 2002. In accordance with section 253.111, F.S., Miami-Dade County was also noticed. In accordance with section 253.115, F.S., landowners within 500 feet of the subject property were noticed on November 15, 2002. No objections were received by the end of the noticing periods.

DSL staff also contacted DEP's representative on the Miami-Dade County Lake Belt Committee. The Lake Belt Committee formulated the Lake Belt Plan that was subsequently accepted by the Legislature. The 20-acre parcel is designated as "Rock Mining Supported" in the Lake Belt Plan, and there have been no objections to a rock mining lease in this area.

Pursuant to section 18-2.020(1)(a)(b), F.A.C., consideration for private leases shall be based upon an appraisal for current lease and royalty rates and shall be competitively bid. Notices to potential bidders were published in the Miami Herald and the Tallahassee Democrat for three consecutive weeks in accordance with section 18-2.020(7)(a) F.A.C. At the end of the noticing period, BIP had submitted the only bid. A special lease condition has been

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Item 1, cont.

incorporated into the lease to ensure that the South Florida Water Management District (SFWMD), the Army Corps of Engineers (ACOE), and their consultants have the ability to conduct engineering testing in the area. In conjunction with the Comprehensive Everglades Restoration Project North Lake Belt Storage Area, BIP will coordinate its operations with SFWMD and ACOE and will accommodate their subsequent schedules for the Master Implementation Plan.

In accordance with section 18-2.018(2)(i) F.A.C., equitable compensation shall be required when the use of uplands will generate income or revenue for a private user or will limit or preempt use by the general public. The Board of Trustees shall award authorization for uses of state-owned lands on the basis of competitive bidding rather than negotiation unless otherwise provided. Since BIP offered a bid proposal of $35,000 annually and/or 6.375 percent aggregate, and, since no other bid proposals were received, staff is of the opinion that the lease be awarded to BIP.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S. The Department of Community Affairs has determined that the plan is in compliance. The proposed lease is consistent with the adopted plan pursuant to a letter from Miami-Dade County dated October 22, 2002 and is consistent with the adopted Miami-Dade County Land Use Plan map.

(See Attachment 1, Pages 1-21)

RECOMMEND APPROVAL

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Item 2 **Soddano Option Agreement/Northeast Florida Blueway Phase II Florida Forever Project**

REQUEST: Consideration of an option agreement to acquire 11.4 acres within the Northeast Florida Blueway Phase II Florida Forever project from Lenie and Anthony Soddano.

COUNTY: St. Johns

LOCATION: Section 48, Township 09 South, Range 30 East

CONSIDERATION: $285,000

PARCEL	ACRES	APPRAISED BY Crenshaw (08/19/03)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
Soddano	11.4	$320,000	$320,000	$62,552*	$285,000** (89%)	120 days after BOT approval

* Acquired in 1995
** $25,000 per acre

STAFF REMARKS: The Northeast Florida Blueway Phase II project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 26, 2003. The project contains 34,929 acres, of which 8,689.16 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 26,228.44 acres, or 75 percent of the project, will remain to be acquired.

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Item 2, cont.

All mortgages and liens will be satisfied at the time of closing. The parcel has outstanding oil, gas and mineral rights owned by Rayonier. Rayonier has advised that the rights will be quit claimed to the Board of Trustees at closing. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and; therefore, the Department of Environmental Protection (DEP) staff will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately.

A title insurance policy, a survey, an environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing.

The Soddano parcel is a 11.4-acre tract located on the south side of SR 206 and Moses Creek Conservation area and is just north of the recently acquired Rayonier tract (Matanzas State Forest). This is one of the few remaining waterfront upland and wetland parcels along the Intracoastal Waterway in St. Johns County, and unlike many other waterfront parcels in northeast Florida, there is no third party ownership of the marsh area. The Soddano parcel has title all the way to the mean high water. The acquisition of parcels in this area would strengthen the ecological connection between Matanzas State Forest and Moses Creek vegetative communities. Parcels of land along SR 206 are quickly being developed with commercial uses along the road frontage and single-family uses off of the road.

The Northeast Florida Blueway is a chain of marshes and tidal lands extending from Mayport south through much of St. Johns County. Estuarine Tidal Marsh covers much of the project. These marshes and open water areas of the Blueway provide important nurseries for many species of game fish and shrimp, and ultimately support a recreational and commercial fishery. Acquisition of this proposal will protect fragile marshes, tidal creeks, and the associated uplands that buffer these fragile resources. The intention of the project is to connect existing natural areas and greenspace to form a conservation lands corridor along the north-south waterway.

The property will be managed by the Department of Agriculture and Consumer Services' Division of Forestry under a multiple-use management regime consistent with the state forest system.

This acquisition is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 2, Pages 1-16)

RECOMMEND APPROVAL

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Item 3 **McDowall Option Agreement/Etoniah/Cross Florida Greenway Florida Forever Project**

REQUEST: Consideration of an option agreement to acquire 251.7 acres within the Etoniah/Cross Florida Greenway Florida Forever project from John D. and Linda A. McDowall.

COUNTY: Putnam

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Item 3, cont.

LOCATION: Sections 01 and 02, Township 11 South, Range 24 East

CONSIDERATION: $360,000

PARCEL	ACRES	APPRAISED BY Clayton (05/23/03)	APPROVED VALUE	SELLER'S PURCHASE PRICE	TRUSTEES' PURCHASE PRICE	OPTION DATE
McDowall	251.7	$365,000	$365,000	*	$360,000** (99%)	120 days after BOT approval

* Parcel was assembled through numerous transactions that occurred over ten years ago
**1,430 price per acre

STAFF REMARKS: The Etoniah/Cross Florida Greenway project is an "A" group project on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 26, 2003. The project contains 66,463 acres, of which 27,716 acres have been acquired or are under agreement to be acquired. After the Board of Trustees approves this agreement, 38,496 acres, or 58 percent of the project, will remain to be acquired.

All mortgages and liens will be satisfied at the time of closing. There is a 50-foot-wide right-of-way easement along the east side of County Road 315, a 150-foot power line easement to Seminole Electric Cooperative, Inc., a 100-foot-wide easement in favor of Florida Gas Transmission Company and a 100-foot-wide ingress-egress easement that is for access to an adjacent property. The property also has approximately 661 feet of road frontage along the east side of County Road 315, this road provides access to the western portion of the property. The seller's have advised that they intend to grant an easement to provide access to the eastern portion of the property. The appraisers considered the easements in their final reconciliation of value. Department of Environmental Protection, (DEP) Office of Greenways and Trails, (OGT) the future managing agency, has determined that the property can be managed with the easements in place. Because these issues were discovered during preliminary due diligence, further research may change the facts and scope of each issue and; therefore, DEP staff will review, evaluate and implement an appropriate resolution for these and any other title issues that arise prior to closing. On June 22, 1999, the Board of Trustees approved a staff recommendation to delegate to DEP the authority to review and evaluate marketability issues as they arise on all chapter 259, F.S., acquisitions and to resolve them appropriately.

A title insurance policy, a survey, an environmental site evaluation and, if necessary, an environmental site assessment will be provided by the purchaser prior to closing.

Though partially logged and planted in pine, the large expanse of flatwoods, sandhills, and scrub in central Putnam County, extending to the Cross-Florida Greenway along the Oklawaha River, is important for the survival of many kinds of wildlife and plants. The greenway itself is a unique strip of land for recreation and conservation that makes a cross-section of the peninsula from the Withlacoochee River to the St. Johns River. In addition, the Etoniah/Cross Florida Greenway project is included in the Ocala National Forest–Camp Blanding Critical Linkage as identified by OGT. This linkage provides ecological connectivity between the Cross Florida Greenway and the Ocala National Forest and will help ensure that wildlife such as the Florida black bear and scrub jay, and plants such as the Etoniah rosemary will have areas in which to thrive. This project will also provide increased watershed protection for the Ocklawaha River basin. The recreational opportunities within this project include long-distance hiking, fishing, camping and hunting.

The Deep Creek floodplain is extremely important from a conservation perspective. Florida Natural Areas Inventory (FNAI) is conducting a rare plant and animal survey on the greenway. The high quality hydric hammock along the Deep Creek floodplain has been labeled a "hot

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Item 3, cont.

spot" for rare plants by FNAI botanists. They have surveyed the existing state-owned portion of Deep Creek and have strongly recommended the state purchase any floodplain within this creek basin. In addition to conservation benefits, this property and the easements associated with it will provide access to existing state-owned land. The easements will also allow OGT to negotiate easement rights with an adjoining landowner to gain additional access to state-owned land

This property will be managed by OGT as an addition to the Marjorie Harris Carr Cross Florida Greenway.

This acquisition is consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 3, Pages 1-16)

RECOMMEND APPROVAL

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Substitute Item 4 **Waive Appraisal Requirements/DOA to Extend Binding Offers/Execute Contracts/North Key Largo Hammocks/Florida Keys Ecosystem/ Coupon Bight/Key Deer Florida Forever Projects**

REQUEST: Consideration of a request to (1) waive the appraisal requirements of section 259.041(7), F.S., on all parcels pursuant to section 259.041(1), F.S., and authorize the Secretary of the Department of Environmental Protection, or his designee, to extend offers based on 1986 Monroe County tax assessed values in lieu of appraisals; and (2) pursuant to section 259.041(1), F.S., delegate authority to the Secretary of the Department of Environmental Protection, or his designee, to extend binding offers up to 125 percent of either the current appraised value or the 1986 tax assessed value provided the price does not exceed $100,000, and execute these contracts for sale and purchase on behalf of the Board of Trustees, for properties located within the North Key Largo Hammocks, Florida Keys Ecosystem and Coupon Bight/Key Deer Florida Forever projects.

COUNTY: Monroe

STAFF REMARKS: The subject projects are all "A" group projects on the Florida Forever Full Fee Project List approved by the Board of Trustees on August 26, 2003. The North Key Largo Hammocks project contains 4,513 acres, of which 4,273 acres have been acquired, leaving 240 acres (112 parcels) or five percent of the project to be acquired. The Florida Keys Ecosystem project contains 8,566 acres, of which 3,020 acres have been acquired, leaving 5,546 acres (2,415 parcels), or 65 percent of the project to be acquired. The Coupon Bight/Key Deer project contains 2,100 acres, of which 1,459 acres have been acquired, leaving 641 acres (1,255 parcels) or 31 percent of the project to be acquired. In these three projects, 5,470 parcels of land are in public ownership; however, 3,782 unimproved parcels of land remain to be acquired.

The "Carrying Capacity Study" of the Florida Keys, dated September 2002, was prepared for the U.S. Army Corps of Engineers and the Department of Community Affairs (DCA). This analysis was designed to (1) determine the Florida Keys ecosystem's ability to withstand the impacts of additional land development activity; (2) adopt comprehensive plan amendments necessary to establish development standards; (3) ensure the rate of growth does not exceed the capacity of the county's infrastructure; and (4) ensure that the unique environmental and

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Substitute Item 4, cont.

marine ecosystems are adequately protected. Staff from the Department of Environmental Protection (DEP), DCA, the Florida Fish & Wildlife Conservation Commission, the U.S. Fish & Wildlife Service, and Monroe County continue to meet to refine the project boundaries and to allocate program efforts to most efficiently achieve our collective and substantially overlapping goals and objectives.

Recent acquisition efforts in the Coupon Bight/Key Deer project indicate these objectives cannot be met using current acquisition methods. Since August of 2002, over 700 offers at 100 percent of appraised value for individual lots have resulted in an unsatisfactory 15 percent acquisition rate. While most of these lots were valued at $12,000, some were valued as high as $44,000. Given the imminent threat to resources in the Florida Keys revealed in the Florida Keys "Carrying Capacity Study" and the relatively low success rate of our current acquisition process for those parcels, the Division of State Lands (DSL) is recommending changes to its acquisition methods within the project areas. DSL intends to utilize some of the successful strategies developed for the Southern Golden Gate Estates project to meet these objectives and has determined a minimum time frame of three years to complete the project utilizing the requested delegated authority. While funds are not specifically designated for only these acquisitions, it is estimated $93,000,000 will be necessary to purchase the remaining parcels in the three project areas.

Over the past twelve months, the Monroe County Land Authority (MCLA) has achieved an acquisition rate of approximately 40 percent in subdivision mass offers without obtaining appraisals. The basis for MCLA's offers has been the 1986 tax assessed values. The following is a summary of methods by which MCLA is authorized to purchase property:

1. MCLA is authorized to purchase property without an appraisal provided the purchase price is less than $100,000;

2. MCLA is authorized to purchase property without an appraisal provided the purchase price is less than 115 percent of the 1986 tax assessed value; and

3. MCLA is authorized to purchase property based on appraisals consistent with DSL's appraisal guidelines and that use current values, applying the Land Use Regulations in effect as of January 1, 1996.

MCLA must have all contracts to purchase property approved by the Land Authority Advisory Committee and the Land Authority Governing Board.

As an Area of Critical State Concern, Monroe County's environmentally sensitive lands are subject to many development restrictions resulting from land use plan policies that took effect in 1986, 1996, and subsequent years. The development potential of many parcels has been reduced to one-half to one-tenth of previously allowed densities. Many owners intending to develop a piece of property must now strategize to obtain a certain number of Rate of Growth Ordinance points by acquiring and donating conservation land to the Monroe County. MCLA's land acquisition policies referenced above have been effective because they yield purchase prices that often correspond with expectations of sellers whose ownership of the property pre-dates many of these development restrictions. The Board of Trustees acknowledged this situation on March 12, 1996 in authorizing the use of appraisals based on the land use regulations in effect as of January 1, 1996.

By focusing additional DSL staff on the three Florida Forever Keys projects and utilizing private real estate contractors, DSL proposes to fast-track the acquisition process.

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Substitute Item 4, cont.

Additionally, approval of the following proposals will further facilitate expeditious and efficient buy out of the remaining unimproved parcels:

- Authorization to waive appraisal requirements, pursuant to section 259.041(7), F.S., and to extend binding offers based on 1986 Monroe County tax assessed values in lieu of appraisals, within the three Florida Forever Keys projects; and

- Authorization to extend binding offers up to 125 percent of appraised value or 1986 assessed value, provided they do not exceed $100,000 per parcel, within the three Florida Forever Keys project areas.

These acquisitions will be consistent with section 187.201(9), F.S., the Natural Systems and Recreational Lands section of the State Comprehensive Plan.

(See Attachment 4, Pages 1-8)

RECOMMEND APPROVAL

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Item 5 **Chapter 18-21, F.A.C. Rule Amendments Adoption/Forms of Authorization**

REQUEST: Adoption of rule amendments to Chapter 18-21, F.A.C., regarding the forms of authorization required to use sovereignty submerged lands.

COUNTY: Statewide

APPLICANT: Department of Environmental Protection (DEP)
(Forms of Authorization Rule Amendments)

STAFF REMARKS: The DEP is proposing amendments to Chapter 18-21, F.A.C., Sovereignty Submerged Lands Management, to clarify existing provisions and thresholds used in determining the appropriate form of authorization needed to conduct activities on sovereignty submerged lands. This includes related amendments to: definitions; management policies, standards, and criteria; general consent conditions; applications for leases and easements; and minor technical amendments to fees. It is the intent of this rulemaking to provide more clarity to staff and the general public in determining the appropriate form of authorization required for activities. This meeting of the Board of Trustees serves as the final adoption hearing on the proposed rule, as attached. If adopted, staff will publish a Notice of Change and then file the rule with the Department of State. The rule will become effective twenty days from that filing.

On May 28, 2003, the Board of Trustees approved draft amendments to Rule 18-21, F.A.C., clarifying the forms of authorization, for publication. The Board of Trustees also requested staff to work with stakeholders regarding three issues and to conduct three public hearings before returning to the Board of Trustees for final adoption. The proposed rule was published July 3 and a corrected notice, to simply include several section titles inadvertently omitted at the beginning of the notice, was published on July 25, 2003. Public hearings were held on July 24 in West Palm Beach, July 25 in Orlando, and August 5 in Tallahassee (teleconference access was available at the August 5 hearing). After considering the proposed amendments and comments from the three public hearings, staff elected to hold a fourth public hearing to enable the public to review and comment on amendments proposed as a result of the first three public hearings. The fourth public hearing was held on September 26, 2003, in Tallahassee

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Item 5, cont.

(also available via teleconference). A total of approximately 54 persons attended the hearings plus six staff. Comments provided at the fourth public hearing were generally supportive and resulted in only minor editorial changes to the proposed rule.

The three issues that the Board of Trustees directed staff to address were:

- Ensure the proposed rule does not adversely impact single-family docks – Staff is of the opinion that the proposed rule amendments, with one exception, preserves the status quo for owners of single-family docks and merely clarifies past rule interpretation, Board of Trustees' direction, and current practice. The single exception is that the proposed rule explicitly defines what constitutes a minimum-size single-family dock and makes it clear that such docks do not require a lease. By including this definition, the proposed rule provides clarity to both staff and applicants, which should simplify the review and authorization process for single-family docks.
- Ensure that the rule does not interfere with aquaculture activities associated with residential property – In consultation with the Department of Agriculture and Consumer Services, staff proposes amendments to paragraph 18-21.003(51), F.A.C., clarifying that incidental aquaculture activities on a private residential dock will not be considered revenue-generating.
- Coordinate with the utility industry – Subparagraph 18-21.005(1)(c)14., F.A.C., letter of consent for emergency activities, was modified to add "other critical, time-sensitive" activities necessary to protect or restore public health, safety or welfare, or utility service.

A summary of the proposed amendments and comments received as a result of the four public hearings is attached. The summary is grouped by rule section to facilitate comparison to the proposed rule. Other minor changes to sentence structure and grammar in the rule were made as a result of comments, but are not included in the summary. The proposed rule amendments are described generally below, with changes made as a result of the public hearings shown in a double underlined format.

18-21.003, Definitions:

- The definition of "dock" was amended to clarify that the term includes all associated walkways, mooring structures, and associated water-dependent structures.
- <u>The definition of "marginal dock" was revised to clarify that such docks must be located immediately adjacent to the shoreline or seawall and to not prohibit a minor access walkway.</u>
- A definition of "minimum-size dock or pier" was added to clearly specify certain docks that qualify for a letter of consent. <u>This definition was revised to clarify that certain regulatory exempt docks or docks constructed in conformance with the aquatic preserve single-family dock criteria qualify as minimum-size docks.</u>
- <u>Amended the definition of "person" to conform with legal requirements that rules applying to the United States of America must specifically state that the definition of a person includes the USA.</u>
- Added a definition of "pier."
- Revised the definition of "preempted area" to clearly include areas that are no longer reasonably accessible to the general public.
- Defined private and public channels. These definitions are used to determine whether a channel qualifies for a letter of consent or an easement.
- Replaced the term "ownership oriented facility" with "private residential multi-family dock or pier" and added a definition of "private residential single-family dock or pier" based on the type of residential structure or use on the associated riparian upland parcel.
- Revised the definition of "revenue-generating" activities, including adding provisions that neither construction by a developer of a private residential single-family or multi-family dock or pier nor certain incidental activities in association with a residential upland would

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Item 5, cont.

cause a dock to be considered "revenue-generating." Incidental aquaculture activities on a private residential dock or pier also would not be considered revenue-generating.

- The definition of "sovereignty submerged lands" was revised to conform with the same definition in Chapter 18-20, F.A.C., to include all submerged land, title to which is held by the Board of Trustees. This clarifies that the provisions of Chapter 18-21, F.A.C., apply to all Board of Trustees owned submerged lands, as do the provisions of Chapter 253, F.S., while the provisions of Chapter 18-2, F.A.C., apply to Board of Trustees owned uplands.

18-21.004, Management Policies, Standards, and Criteria:

- Clarified that private residential multi-family docks with one or two wetslips, which are not clearly addressed in the current rule, are subject to the same criteria as private residential single-family docks and 40:1, except when constructing a minimum size dock.
- Clarified the unit:slip ratio language applicable to private residential multi-family docks, including its applicability along common riparian shorelines within a single plan of development.
- Revised the provisions addressing the width of waterbody to clarify the purpose of this provision and to allow adjustment of that calculation where navigable waterbodies are bordered by dense forested shoreline vegetation, such as mangroves.
- Added "General Conditions for Authorizations" (previously known as "General Consent Conditions"). Condition (e) was revised, based on discussions with industry and the Fish and Wildlife Conservation Commission, to replace the term "cause the harm or harassment of" with "adversely affect." Condition (h) was revised to allow repair or replacement within one year if a structure is damaged by a discrete event.

18-21.005, Forms of Authorization:

- Provided that the proper form of authorization shall be determined based on granting the "least" interest necessary to conduct the activity and provided for co-location of projects as long as those projects do not conflict.
- Listed as "exceptions" those activities that have been granted Board of Trustees' authorization under various statutory provisions. The exception for trimming or alteration of mangroves under Sections 403.9321-.9334, F.S., was moved to this list, instead of being listed as an exception to letter of consent.
- Created a separate listing of activities that qualify for "consent by rule" (a.k.a., automatic consent) and clarified those activities, including applicable conditions. Specified that consent by rule activities are subject to certain provisions of Rule 18-21.004, F.A.C., including the springs criteria and the General Conditions for Authorizations.
- Expanded the list of activities that qualify for a letter of consent, including provisions for emergency activities and restoration or enhancement projects. Clarified that certain common shorelines within a single plan of development may be combined for the purposes of calculating the preempted area to shoreline ratio. Clarified that the letter of consent provisions applicable to repair and replacement do not apply where such activities are already authorized in a current valid Board of Trustees authorization, such as a lease or easement. Expanded the letter of consent for emergency situations to include "other critical, time-sensitive" activities for utility service. Provided for a letter of consent for certain federal activities under 43 USC 1311(d) and 1314.
- Clarified those activities that require a lease or easement. Included the existing lease requirements contained in the Biscayne Bay Aquatic Preserve rule (Chapter 18-18, F.A.C.). Groins, breakwaters, and other shoreline protection structures constructed as part of a docking facility may be included in a lease, instead of requiring a separate easement authorization.
- Transferred, with no substantive change, special event authorizations into letter of consent and lease sections as appropriate and eliminated the separate forms of authorization language for special events.

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Item 5, cont.

- Deleted management agreements and transferred activities previously authorized under management agreement to a letter of consent and easement based on the nature of associated structures and degree of public exclusion.
- Clarified noticing requirements and referenced these requirements in applicable application sections of the rule to avoid unnecessary repetition. Provided that activities authorized under a Chapter 373, F.S., noticed general or general permit are excepted from noticing requirements unless deemed to be of heightened public concern.

18-21.008, Applications for Lease:
- Amended noticing provisions as noted above.

18-21.009 and .010, Applications for Public and Private Easement, respectively:
- Amended noticing provisions as noted above and minor technical changes.
- Added a requirement, similar to that for leases, to provide the status of current local zoning and any local government approvals necessary for activities. This is an information requirement only; obtaining local approval is not a Board of Trustees' approval condition.

18-21.011, Payments and Fees:
- Amended to reflect replacement of the term "ownership oriented facilities" with "private residential multi-family docks."
- Amended to reference Section 253.03, F.S., exceptions to severed dredge materials fees.

During the public hearing process, staff also received a number of comments that were outside the scope of this rulemaking. These comments addressed dock criteria; resource protection; unit:slip and 40:1 ratios associated with ownership oriented facilities; and lease fees. Staff anticipates addressing the dock criteria and resource protection issues in the "dock criteria" rulemaking that is already underway. The unit:slip, 40:1**,** and lease fee issues were discussed as part of the WCI agenda item at the October 28, 2003, Board of Trustees meeting, when staff was directed to address these issues in rulemaking. Staff has begun this rulemaking process, by separating unit:slip and 40:1 from the balance of "dock criteria"; fees will be addressed separately by another DEP division. Staff anticipates briefing the Board of Trustees on the direction of this effort at its January 27, 2004, meeting.

(See Attachment 5, Pages 1-18)

RECOMMEND APPROVAL

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Substitute Item 6 Mike Destin Boatyard, Inc. Recommended Consolidated Intent

REQUEST: Consideration of an application for (1) a modification of an existing five-year sovereignty submerged lands lease to (a) reduce the term of the lease to two years; (b) change the use from a barge repair facility to a commercial marina; and (c) increase the preempted area from 40,985 square feet to 136,572 square feet, more or less; (2) authorization for the severance of 15,000 cubic yards of sovereignty material; and (3) authorization for the placement of 850 cubic yards of riprap.

COUNTY: Okaloosa
Lease No. 460029871
Application No. 46-0128377-003-DF

APPLICANT: Mike Destin Boatyard, Inc.

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Substitute Item 6, cont.

LOCATION: Section 00, Township 02 South, Range 22 West, in Choctawhatchee Bay, Class II Waters, Prohibited Shellfish Harvesting Area, within the local jurisdiction of the city of Destin
Aquatic Preserve: No
Outstanding Florida Waters: No
Designated Manatee County: No
Manatee Aggregation Area: No
Manatee Protection Speeding Zone: No

CONSIDERATION: $34,021.73, representing (1) $15,271.73 as the initial lease fee computed at the base rate of $0.1278 per square foot, discounted 30 percent because of the first-come, first-served nature of the facility, and including the initial 25 percent surcharge payment for the additional area; and (2) $18,750.00 for the severance of sovereignty material computed at the rate of $1.25 per cubic yard, pursuant to section 18-21.011(3)(a)3, F.A.C. Sales tax will be assessed, pursuant to section 212.031, F.S., if applicable. The lease fee may be adjusted based on six percent of the annual rental value, pursuant to section 18-21.011(1)(a)1, F.A.C.

STAFF REMARKS: In accordance with rules adopted pursuant to sections 373.427(2) and 253.77(2), F.S., this "Recommended Consolidated Notice" contains a recommendation for issuance of both the permit required under part IV of chapter 373, F.S., and the authorization to use sovereignty submerged lands under chapter 253, F.S. The Board of Trustees is requested to act on those aspects of the activity, which require authorization to use sovereignty submerged lands. If the Board of Trustees approves the request to use sovereignty submerged lands, and the activity also qualifies for a permit, the Department of Environmental Protection (DEP) will issue a "Consolidated Notice of Intent to Issue" that will contain general and specific conditions. If the Board of Trustees denies the use of sovereignty submerged lands, whether or not the activity qualifies for a permit, DEP will issue a "Consolidated Notice of Denial."

The lessee has an existing sovereignty submerged lands lease which contains approximately 40,985 square feet of preempted area. The current lease authorizes a 15-foot-wide by 200-foot-long dock, the mooring of a 50-foot-wide by 295-foot-long barge, and 20 mooring pilings that were proposed to be used as a boat repair and barge mooring facility. The lessee has not constructed the proposed dock structures and the site currently contains a 4.6-foot-wide by 158-foot-long dock, a 5-foot-wide by 58-foot-long dock, and an “L”-shaped 5-foot-wide by 72-foot-long dock. The site contains three existing docks that appear to have been constructed prior to 1970, but were not grandfathered. Two of the docks are located outside of the January 2000 lease boundary. As the water depths around all of the existing docks are too shallow for mooring, none of the docks have been used for approximately five to eight years. DEP approved the proposed barge repair facility and one new dock in January 2000, without determining whether the existing (pre-1970) structures were authorized. As a result, no temporary use agreement or lease fees in arrears were assessed for the existing structures or amount of preempted area located outside of the current lease boundary during the review and approval of the January 2000 lease. A special lease condition has been added which requires the lessee to construct the proposed facility within one year of execution of the lease. If the proposed facility is not constructed within one year, the lease must be modified to reflect the configuration, structures, and amount of preempted area that currently exists. The lessee is proposing to remove the three existing docks and existing riprap and construct a new 33-slip marina, which would require increasing the preempted area by 95,587 square feet, for a total preempted area of 136,572 square feet. The lessee proposes to change the use of the facility from a barge repair facility to a commercial marina, which will be used in conjunction with an upland parking lot. All of the slips will be maintained on an open to the public, first-come, first-served basis, and this requirement has been included as a special lease condition. The marina will accommodate recreational powerboats ranging in size from 42 to 70 feet in length.

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Substitute Item 6, cont.

There is a 4,260-square-foot (0.098 acre) seagrass bed located in the proposed project area. To avoid impacts to the seagrass bed, the lessee is proposing to construct two connected "U"-shaped structures to provide for mooring on the east and west sides of the seagrass bed. In order to protect the seagrass bed from wave action, the lessee is proposing to construct an 8-foot-wide by 360-foot-long riprap breakwater on the north and east sides of the seagrass bed. The lessee is also proposing to place two 10-foot-wide sections of riprap as a breakwater on the southern side of the seagrass bed. These two sections of riprap will have a 100-foot-wide gap between them to allow for flushing. DEP's hydrographic section has stated on June 25, 2002 that the proposed project will not have an adverse impact on the water quality or result in scour of the bottom sediments.

The near shore area at the project site has historically had water depths of between -8 to -10 feet mean low water (MLW). However, in recent years, sand has begun accumulating at the site. It appears that the sand is being transported from the area north of the site and is being transported across the channel that forms the entrance to Old Pass Lagoon. An adjacent marina has been authorized immediately north of the project site that will likely intercept the transport of material from the north, and this should reduce the amount of sand removal/ maintenance dredging required in the future. In order to achieve the adequate water depths currently needed in the proposed near shore mooring area, the lessee plans to dredge approximately 15,000 cubic yards of the accumulated sand from the basin and entranceway to the basin. The access channel shall be dredged to a depth of –10 feet MLW and the depths within the basin shall be dredged to the contours shown on Sheet 13 of the wetlands resource permit (between –6 and –8 feet mean low water). The spoil will be disposed of in an upland cell at the project site. The lessee will need to fill the upland spoil cell several times, as the spoil cell is inadequate to hold the estimated volume of sand and water. The contractor will need to fill the spoil cell to capacity, allow the spoil to dry, and haul off the spoil prior to resuming dredging. To help prevent water quality degradation at the site, specific conditions have been added to the associated DEP wetland resource permit (WRP) that address turbidity monitoring, dredging and construction of disposal cells to contain the spoil removed from the site.

The overall proposed docking facility will preempt a total of 165,369 square feet of sovereignty submerged lands, which includes the dock structures, mooring area, and the seagrass bed. Due to the location of the seagrass bed, the facility has been designed to have one mooring area adjacent to the proposed seawall, with a second mooring area located waterward of the seagrass bed. The center portion of the structure has been designed to protect the seagrass bed, and preempts approximately 28,797 square feet. DEP staff suggested that the lessee move the facility further offshore to avoid the seagrass bed and to reduce the amount of dredging necessary. The lessee was unable to move the dock further offshore as the dock would potentially impact the federal navigation channel. In addition, if the nearshore mooring area were moved offshore, the property would not be wide enough to accommodate the number of slips that the lessee needs in order to make the project economically feasible. The proposed dock will extend out approximately the same distance as the adjacent docking facility to the north, reducing the potential that the dock will be a navigational hazard. Due to the design constraints, the lessee has requested that the center portion of the structure, that was designed to protect the seagrass bed, be excluded from the lease boundary. The total amount of preempted area comprising 165,369 square feet, minus the 28,797 square feet containing the seagrass bed, leaves a remainder of 136,572 square feet, on which the lessee is proposing to pay lease fees. Section 18-21.003(38), F.A.C., states in part, "If the activity is required to be moved waterward to avoid dredging or disturbance of nearshore habitat, a reasonable portion of the nearshore area that is not impacted by dredging or structures shall not be included in the preempted area." This area contains seagrass resources and is too shallow for mooring; therefore, DEP staff believes that this area should be excluded from the preempted area and lease boundary. Special lease conditions have been added that would prohibit mooring in this portion of the marina and require the lessee to place a sign on the adjacent uplands that explains the importance of seagrass beds.

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Substitute Item 6, cont.

The owners of the upland property have granted a lease to Mike Destin Boatyard, Inc., for a total of 15 years, with the initial date of the lease beginning in June 1997. The initial upland lease was for 36 months with four additional terms of 36 months. The lessee's existing five-year sovereignty submerged lands lease will be up for renewal in 2004. With the proposed change of use to a marina, with at least 90 percent of the slips maintained for rent to the public on a first-come, first-served basis, the lessee would qualify for a standard 10-year lease. However, the current upland lease expires on February 28, 2006. As such, the current lease can only be extended to that date, to coincide with the upland lease. If the upland lease is renewed, until 2012, the projected date of the end of the renewal period, the sovereignty submerged lands lease could be renewed for a longer period of time, not to exceed ten years.

DEP's WRP requires sewage pumpout facilities and prohibits liveaboards and fueling facilities. The recommendation of the Florida Fish and Wildlife Conservation Commission (FFWCC) to follow the standard manatee construction conditions for all in-water construction have been addressed in the WRP and included as a special lease condition. FFWCC's Florida Marine Patrol stated, in a letter dated September 17, 2003, that it did not object to the project or have any navigational concerns. The Department of Community Affairs (DCA) stated in a letter dated October 31, 2001, that the project was not considered to be a Development of Regional Impact. In a letter dated January 4, 2002, DCA offered no objections to the project.

This project was not required to be noticed pursuant to section 253.115, F.S., because the project is a lease modification.

A local government comprehensive plan has been adopted for this area pursuant to section 163.3167, F.S.; however, DCA determined that the plan was not in compliance. In accordance with the compliance agreement between DCA and the local government, an amendment has been adopted which brought the plan into compliance. The proposed action is consistent with the adopted plan as amended according to a letter received from the Destin Harbor and Waterways Board.

(See Attachment 6, Pages 1-34)

RECOMMEND APPROVAL SUBJECT TO THE SPECIAL LEASE CONDITIONS AND PAYMENT OF $34,021.73

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Substitute Item 7 **South Florida Land Holdings, LLC & Charlotte Sarasota Holdings, LLP v. BOT Settlement Agreement**

REQUEST: Consideration of a land exchange for Florida Forever "A" List lands existing within the Cape Haze/Charlotte Harbor Florida Forever Acquisition, granting of an easement (ingress, egress, drainage and utility), and proposed settlement in the case of South Florida Land Holdings LLC SFLH & Charlotte Sarasota Holdings, CSH LLP v. Board of Trustees of the Internal Improvement Trust Fund, Twentieth Judicial Circuit (Charlotte County) Court Case No. 01-1262 CA, and a finding that certain lands are no longer needed for conservation purposes.

COUNTY: Charlotte

APPLICANTS: Department of Environmental Protection, Division of State Lands, South Florida Land Holdings, LLC and Charlotte Sarasota Holdings, LLP.

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Substitute Item 7, cont.

LOCATION: The Board of Trustees receives lands located in sections 14, 23, 24, 25 and 36, Township 41 South, Range 21 East. Jointly held Board of Trustees/Southwest Florida Water Management District lands located in Sections 3, 9 and 10, Township 41 South, Range 21 East, are exchanged.

STAFF REMARKS:

Background: On December 16, 1986, the Board of Trustees approved agenda item number 27 (BLA Review number 86-042-741), attached hereto as Exhibit "A," wherein the Board of Trustees accepted General Development Corporation's ("GDC") donation of approximately 414 acres of land located in Charlotte County, Florida. A copy of the deed was presented to the Board of Trustees as part of the backup to the agenda item.

To effectuate this donation, on September 20, 1988, a special warranty deed was executed by and between GDC and the Board of Trustees; however, because Department staff determined the deed contained unacceptable conditions, the deed was not recorded. The conditions required the Board of Trustees to be responsible for all delinquent taxes and special assessments and also restricted certain Board of Trustees' activities. November 17, 1989, Department staff correspondence indicates that the land donation had "not closed due to problems with the language contained within the deed." Accordingly, Department staff continued to work with GDC on acceptable deed language. GDC filed bankruptcy in 1990 and reorganized into Atlantic Gulf Communities Corporation ("AGCC").

After the corporate reorganization, the Department staff again attempted to complete and finalize the donation. Final correspondence between Department staff and AGCC took place in late 1997 and early 1998. The Department staff asked AGCC if the subject property was "still available for donation." The brief chronology above characterizes the challenges Department staff confronted in its attempt to close the 1986 land donation. As a result of these challenges, Department staff never recorded the deed. In 1999, South Florida Land Holdings, LLC (SFLH) purchased the disputed property from AGCC. According to SFLH, its review of the chain of title did not reveal any prior recorded interests in favor of the Board of Trustees.

During the Fall of 2000, SFLH applied to the Charlotte County Board of Zoning Appeals ("BZA") and requested a special exception to build a marina on the subject property. DEP's Buffer Preserves staff received notice of the request and informed Charlotte County that the subject property was State owned. As a result, in July of 2001, SFLH filed a quiet title action against the Board of Trustees alleging that it owned the property donated to the Board of Trustees in December of 1986.

The Court ordered the parties to attempt to mediate the title dispute. Settlement discussions between the parties ensued during the late Fall of 2001, premised upon the notion of a potential land exchange. The Board of Trustees considered the land exchange, as part of a Settlement Agreement (Settlement Agreement attached hereto as Exhibit "B1"), at its September 10, 2002, Cabinet meeting. The Board of Trustees, however, denied the request and asked the Office of the Attorney General ("AG") to conduct additional discovery.

The AG's office complied with that request and the matter is currently scheduled for a January 2004 trial date. Moreover, the Court has ordered the parties back to mediation for a second time. In light of the discovery, and the Court order, the AG's office recommends reconsideration of the settlement proposal. The parties believe a slightly modified version of the proposed land exchange presents a reasonable settlement option.

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Substitute Item 7, cont.

Proposed Settlement Agreement: See modified Settlement Agreement, attached hereto as Exhibit "B". This agreement resolves all pending and future litigation, costs, attorneys' fees, and interest.

Exchange: In the exchange, the Board of Trustees will receive approximately 468 acres of Florida Forever "A" List lands in exchange for approximately 210 acres of jointly-owned Board of Trustees/Southwest Florida Water Management District (Board of Trustees/ SWFWMD) lands and an easement to lands held by CSH.

Lands to be received by CSH: The jointly held Board of Trustees/SWFWMD lands present Department staff with consistent and long-term management problems. Specifically, the 210 acres are lands created by upland spoil, which left little natural habitat and a large, invasive plant infestation. The land is not currently managed. Accordingly, Department staff recommends exchanging the 210 acres. The SWFWMD's Governing Board approved the original settlement agreement, attached hereto as Exhibit "B1," at its June 25, 2002, meeting. Subsequent to the Board of Trustees approval, the SWFWMD will reconsider the modified settlement agreement, attached hereto as Exhibit "B," during the SWFWMD's Governing Board's Winter/Spring 2004 meeting. Accordingly, staff request a finding by the Board of Trustees that the lands are no longer needed for conservation purposes.

Easement: A non-exclusive seventy foot (70') ingress, egress, drainage, and utility easement is to be granted by the SWFWMD and the Board of Trustees to CSH for access to land it owns. The easement is over an existing dirt access to the buffer preserve.

Benefits of the Settlement Agreement to the State: In addition to settling all pending and future litigation, costs, attorneys' fees, and interest, this settlement agreement benefits the Charlotte Harbor area and enhances the management objectives of the Cape-Haze/Charlotte Harbor "A" Listed Project.

The overview map, attached hereto as Exhibit "C," shows the exchanged lands in the modified settlement agreement. Note that the 468 acres received by the Board of Trustees have all been identified as Florida Forever "A" List lands. The acreage received includes title to most of the disputed land. CSH will retain roughly 30 acres. In addition the Board of Trustees will receive three additional/parcels including 12 acres on State Route 776 ("776 Property"). The SWFWMD will also receive 93 acres located in DeSoto County.

The lands received by the Board of Trustees, are all located in the Cape Haze/Charlotte Harbor Florida Forever "A" list project. The land included in the settlement agreement provide essential additions to lands previously acquired through the Environmentally Endangered Lands Program of the 1970s and the Save Our Rivers Program of the 1980s. Most of the "Board of Trustees Lands" are wetlands, including mangrove, salt marsh, and salt flats, with occasional uplands including pine flatwoods, and scrub habitats.

The "776 Property," is characterized by the parcel, which lies between two forks of Sam Knight Creek. The Creek provides drainage into the Gasparilla Sound/Charlotte Harbor Aquatic Preserve. Development of the "776 Property" for commercial activity would effect the use of surrounding waters by manatees, wading birds, osprey and bald eagles that nest on adjacent state lands. There is also a recreational fishery on the shallow creek, which would be better utilized by the public through use of non-motorized boats. The site is of great interest for public access to adjacent waters, and if acquired, the site is being considered for a canoe launch site through a cooperative agreement with Charlotte County. There is also a prehistoric site on this parcel that would be protected under state ownership.

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Substitute Item 7, cont.

Both the "Board of Trustees Lands" and the "776 Property" will aid in the protection or "buffering" of state waters, primarily the Cape Haze and the Gasparilla Sound/Charlotte Harbor Aquatic Preserves, as well as improve the protection and recreational value of the existing state owned-lands. These lands will also provide a land base for public access by improving connectivity between and among existing state-owned lands. This settlement agreement benefits the Charlotte Harbor area and enhances the management objectives of the Cape-Haze/Charlotte Harbor "A" Listed Project. Charlotte Harbor, one of the largest and most productive estuaries in Florida, supports an important recreational and commercial fishery, but is rapidly being surrounded by urban development. By conserving coastal wetlands, flatwoods and prairies behind mangrove swamps and salt marshes along Charlotte Harbor, the Cape-Haze/Charlotte Harbor project will help preserve the water quality of the estuary and protect habitat for the Florida manatee and other rare wildlife. In addition, citizens are provided opportunities for public access to enjoy passive, nature based recreational pursuits.

In sum, the land exchange contemplated in the settlement agreement will accomplish the multiple objectives of acquiring essential lands identified for acquisition under the Florida Forever program, increasing public access to Board of Trustees' lands, and settling the ongoing litigation. Additionally, the combined Board of Trustees and SWFWMD efforts embodied in this agreement demonstrates an interagency commitment that advances two interdependent objectives: 1) natural resource enhancement and protection; and (2) increased natural resource management efficiency.

The Department's Florida Park Service will manage the lands acquired in the settlement agreement as part of the DEP's Buffer Preserves.

These lands acquired as part of this settlement agreement are consistent with Section 187.201 (10), F.S., the Natural Systems and Recreational Lands' section of the State Comprehensive Plan.

(See Attachment 7, Pages 1-47)

RECOMMEND **APPROVAL OF THE SETTLEMENT AGREEMENT WHICH PROVIDES FOR THE EXCHANGE OF APPROXIMATELY 468 ACRES FOR APPROXIMATELY 210 ACRES OF JOINTLY-OWNED BOT/SWFWMD LANDS.**

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Good Cause Item 8 **Private Hunt Club Use Agreements/Box R Ranch/Franklin County**

REQUEST: Consideration of a request for approval of five use agreements to allow private hunt club use on the Box R Ranch in Franklin County.

COUNTY: Franklin

APPLICANTS: Longboy Hunting Club
Pine Log Hunting Club
Apalachicola Hunting Club
Living Water Hunting Club
Tilton Hunting Club

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Good Cause Item 8, cont.

LOCATION: Sections 24, 25, 26, 33, 34, 35, 36, Township 08 South, Range 09 West; Sections 01-04, Township 09 South, Range 09 West; Sections 19-21, 28, 31, Township 08 South, Range 08 West; and Section 06, Township 09 South, Range 08 West

CONSIDERATION: $27.30 – Longboy Hunting Club; $1,067.98 – Pine Log Hunting Club; $908.23 – Apalachicola Hunting Club; $351 – Living Waters Hunting Club; $369.25 - Tilton Hunting Club, fees prorated based on 114 days of hunting

STAFF REMARKS: On November 12, 2003, the Board of Trustees approved the acquisition of the Box R Ranch property in Franklin County from St. Joe Timberland Company of Delaware L.L.C. (St. Joe Company), which will be managed by the Florida Fish and Wildlife Conservation Commission (FWC). Prior to its sale of the property to the state, St. Joe Company entered into five private hunting leases on the property. The leases contained a termination provision in the event the property was going to be sold. In anticipation of the sale to the state, St. Joe Company canceled the leases. Because the hunt clubs entered into the leases with St. Joe Company in good faith expecting use of the property for the term of the leases, and because the current hunting season has already begun, Department of Environmental Protection (DEP) staff is requesting approval to enter into short-term use agreements with the hunt clubs to allow them to continue their use of the property until 10 days after the end of the current hunting season, which would be May 5, 2004. This action would be consistent with the Board of Trustees recent decision to allow hunt clubs on the Crooked River tract to continue their use of the property until April 30, 2004. The FWC is recommending a termination date of May 5, 2004, to allow 10 days following hunting season for the hunt clubs to clean up the property.

Continuation of the five hunting leases on the Box R Ranch property was not anticipated at the time the Board of Trustees approved the acquisition, and DEP does not have the authority to approve private upland use agreements that exceed one acre in size. For these reasons, DEP is now requesting approval of the five use agreements.

(See Attachment 8, Pages 1-3)

RECOMMEND APPROVAL